

ESTTA Tracking number: **ESTTA289119**

Filing date: **06/10/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Apex, LLC
Granted to Date of previous extension	06/10/2009
Address	100 Main Street Pawtucket, RI 02860 UNITED STATES
Attorney information	Brent Canning Apex, LLC 100 Main Street Pawtucket, RI 02860 UNITED STATES trademarks@theapexcompanies.com

Applicant Information

Application No	77423772	Publication date	02/10/2009
Opposition Filing Date	06/10/2009	Opposition Period Ends	06/10/2009
International Registration No.	NONE	International Registration Date	NONE
Applicant	CHEMPORT INCORPORATION JCB 15-1 Dongsu-dong Naju-si, Jeollanam-do, KOREA, REPUBLIC OF		

Goods/Services Affected by Opposition

Class 030. All goods and services in the class are opposed, namely: Energy food not for medical use mainly comprised of grains, namely, energy bars; pizzas, baking powder, biscuits, cakes, bread rolls, rice cakes; a cake made from wheat flour, oil, and honey; bars of sweet jellied bean paste; processed grains; and processed wheat
Class 032. All goods and services in the class are opposed, namely: Vegetable juices for beverages, extracts of hops for making beer, fruit powders and fruit syrups used in the preparation of soft drinks and sports beverages, orange juice, aerated water, isotonic beverages, tomato juice, drinking water, bottled water, and beer


Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1847961	Application Date	08/27/1993
Registration Date	08/02/1994	Foreign Priority Date	NONE
Word Mark	APEX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1942/09/00 First Use In Commerce: 1942/09/00 retail department store services		

U.S. Registration No.	2155905	Application Date	05/25/1994
Registration Date	05/12/1998	Foreign Priority Date	NONE
Word Mark	APEX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 037. First use: First Use: 1924/00/00 First Use In Commerce: 1924/00/00 automotive repair and maintenance services Class 042. First use: First Use: 1924/00/00 First Use In Commerce: 1924/00/00 retail automobile parts and accessories stores		

U.S. Registration No.	2454720	Application Date	10/19/1999
Registration Date	05/29/2001	Foreign Priority Date	NONE
Word Mark	APEX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 012. First use: First Use: 1998/11/13 First Use In Commerce: 1998/11/13 anti-theft alarms for vehicles, namely programmable anti-theft alarms, horns, trunk releases, flashing parking lights, shock sensors, plug-in connectors and starter disable relays all for vehicles, and all sold together as a unit		

U.S. Registration	2562812	Application Date	08/23/1999
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No.			
Registration Date	04/23/2002	Foreign Priority Date	NONE
Word Mark	APEX ONLINE		
Design Mark	<p style="text-align: center;">APEX ONLINE</p>		
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 1996/11/01 First Use In Commerce: 1996/11/01 Retail store, mail order purchase and computerized on-line retail services, featuring, domestics, furniture, bedding, kitchenware, major appliances, small appliances, housewares, bathroom accessories, living room and bedroom accessories, table top accessories, flatware, power equipment, electronics, photography, jewelry, cosmetics, toys, giftware, music and video, gardening, handbags, sporting goods, clocks, luggage, home office, grills, clothing, men# s and ladies# accessories, shoes, athletic footwear, novelties, food and Christmas items		


U.S. Registration No.	2443933	Application Date	08/23/1999
Registration Date	04/17/2001	Foreign Priority Date	NONE
Word Mark	APEX STORES		
Design Mark	<p style="text-align: center;">APEX STORES</p>		
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 1996/11/01 First Use In Commerce: 1996/11/01 Retail store, mail order purchase and computerized on-line retail services, featuring, domestics, furniture, bedding, kitchenware, major appliances, small appliances, housewares, bathroom accessories, living room and bedroom accessories, table top accessories, flatware, power equipment, electronics, photography, jewelry, cosmetics, toys, giftware, music and video, gardening, handbags, sporting goods, clocks, luggage, home office, grills, clothing, men's and ladies' accessories, shoes, athletic footwear, novelties, food and Christmas items		

U.S. Registration No.	2657639	Application Date	11/01/1999
Registration Date	12/10/2002	Foreign Priority Date	NONE
Word Mark	APEX MALL		
Design Mark	<p style="text-align: center;">APEX MALL</p>		
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 1966/00/00 First Use In Commerce: 1966/00/00 SHOPPING MALL SERVICES AND LEASING OF SHOPPING MALL SPACE		

U.S. Registration No.	3557603	Application Date	07/12/2006
Registration Date	01/06/2009	Foreign Priority Date	NONE
Word Mark	APEX COMPANIES		
Design Mark	<p style="text-align: center;">APEX COMPANIES</p>		
Description of Mark	NONE		
Goods/Services	<p>Class 036. First use: First Use: 2002/09/01 First Use In Commerce: 2002/09/01 Shopping Mall services, namely, leasing and management of shopping mall space; real estate management; financial services in the nature of investments and financing in the field of real estate, securities, debt, venture capital and loans</p> <p>Class 037. First use: First Use: 2002/09/01 First Use In Commerce: 2002/09/01 Real estate development</p>		


U.S. Registration No.	2918976	Application Date	10/27/2003
Registration Date	01/18/2005	Foreign Priority Date	NONE
Word Mark	APEX ADVANTAGE		
Design Mark			


Description of Mark	NONE
Goods/Services	Class 040. First use: First Use: 1996/12/01 First Use In Commerce: 2002/09/01 CUSTOM FINISHING AND EMBELLISHMENT OF PROMOTIONAL ITEMS, NAMELY, EMBROIDERY, EMBOSSING, ENGRAVING, CUSTOMIZED PRINTING, IMPRINTING, SCREEN PRINTING AND PAD PRINTING WITH COMPANY NAMES, LOGOS, MONOGRAMS, WORDS, AND/OR PICTURES FOR PROMOTIONAL AND ADVERTISING PURPOSES ON THE GOODS OF OTHERS, NAMELY, SPORTSWEAR, APPAREL AND OTHER PRODUCTS

U.S. Registration No.	3244685	Application Date	07/12/2006
Registration Date	05/22/2007	Foreign Priority Date	NONE
Word Mark	APEX COMPANIES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 040. First use: First Use: 2002/09/01 First Use In Commerce: 2002/09/01 custom finishing and embellishment of promotional items, namely, embroidery, embossing, engraving, customized printing, imprinting, screen printing and pad printing with company names, logos, monograms, words, and/or pictures for promotional and advertising purposes on the goods of others, namely, sportswear, apparel and other products		


U.S. Registration No.	3356317	Application Date	07/12/2006
Registration Date	12/18/2007	Foreign Priority Date	NONE
Word Mark	APEX COMPANIES		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 042. First use: First Use: 2002/09/01 First Use In Commerce: 2002/09/01 Computer services, namely, creating indexes of information, sites, and other resources available on computer networks; computer services, namely, providing search engines for obtaining data on a global computer network		
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U.S. Application No.	77588785	Application Date	10/08/2008
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	APEX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 1951/00/00 First Use In Commerce: 1951/00/00 Arranging of seminars; Educational demonstrations; Educational services, namely, providing classes, seminars, workshops, training and instruction in the fields of personal and professional topics of interest		

U.S. Application No.	77588760	Application Date	10/08/2008
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	APEX UNIVERSITY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 1994/00/00 First Use In Commerce: 1995/01/01 Arranging of seminars; Educational demonstrations; Educational services, namely, providing classes, seminars, workshops, training and instruction in the fields of personal and professional topics of interest		

U.S. Application	78928022	Application Date	07/12/2006
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No.			
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	APEX COMPANIES		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 035. First use: First Use: 2002/09/01 First Use In Commerce: 2002/09/01 Promoting the goods and services of others by placing advertisements and promotional displays in an electronic site accessed through computer networks; providing an on-line advertising guide featuring the goods and services of others; electronic retailing services and ordering services via computer featuring a wide variety of merchandise; Retail store and advertising services, featuring a wide variety of merchandise; arranging for others the repair, service and replacement of a wide variety of general merchandise and vehicles; retail automobile parts and accessories stores; retail store services featuring customer pick-up and/or payment of newly purchased or repaired merchandise; pick up and delivery services; business, advertising, marketing and management consulting services</p> <p>Class 037. First use: First Use: 2002/09/01 First Use In Commerce: 2002/09/01 Automobile repair and maintenance</p>		

Attachments	75826147#TMSN.gif (1 page)(bytes) 75781411#TMSN.gif (1 page)(bytes) 75781412#TMSN.gif (1 page)(bytes) 75836787#TMSN.gif (1 page)(bytes) 78928052#TMSN.jpeg (1 page)(bytes) 78928036#TMSN.jpeg (1 page)(bytes) 78928010#TMSN.jpeg (1 page)(bytes) 77588785#TMSN.jpeg (1 page)(bytes) 77588760#TMSN.jpeg (1 page)(bytes) 78928022#TMSN.jpeg (1 page)(bytes) Apex --- Notice of Opposition v Chemport 6.10.09.pdf (9 pages)(35444 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/gailyc c. sonia/
Name	Gailyc C. Sonia

Date	06/10/2009
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial No. 77/423,772

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APEX, LLC,)	
	Opposer)	
)	
v.)	Opposition No.:
)	
CHEMPORT INCORPORATION,)	
	Applicant)	
<hr/>)	

NOTICE OF OPPOSITION

Apex, LLC, a limited liability company organized and existing under the laws of the State of Rhode Island, having a business address of 100 Main Street, Pawtucket, Rhode Island 02860 (“Opposer”), believes that it will be damaged by registration of Application Serial No. 77/423,772 for the mark MEGAPEX & Design as it relates to goods in International Class 30, namely, “Energy food not for medical use mainly comprised of grains, namely, energy bars; pizzas, baking powder, biscuits, cakes, bread rolls, rice cakes; a cake made from wheat flour, oil, and honey; bars of sweet jellied bean paste; processed grains; and processed wheat”, and in International Class 32, namely “Vegetable juices for beverages, extracts of hops for making beer, fruit powders and fruit syrups used in the preparation of soft drinks and sports beverages, orange juice, aerated water, isotonic beverages, tomato juice, drinking water, bottled water, and beer” (the “Chemport Mark”). The grounds for opposition are as follows:

Apex and its Marks

1. Since at least as early as 1924, Opposer and its predecessors and their affiliates (collectively, "Apex") have used the mark "APEX" and other marks incorporating the word "APEX" (collectively the "Apex Marks"). Over the past 85 years, Apex has used the Apex Marks on and in connection with retail services, retail stores, and on-line retail stores and services, featuring retail services, food items, kitchenware, appliances, housewares, accessories, gifts, novelty items, gardening products, gadgets, automotive items, and holiday items; manufacturing services; automotive services and sales of automotive parts and accessories; commercial and residential real estate development and construction services; real estate management services; and advertising and marketing businesses, among others.

2. Opposer is the owner of common law rights in the mark "APEX," as a result of the continuous use of the APEX mark by Apex since at least as early as 1924.

3. Opposer owns the following U.S. registrations for its APEX family of trademarks and service marks, among others:

<u>Mark</u>	<u>Registration No./ Serial No.</u>	<u>Issue Date/ Filing Date</u>	<u>Goods and Services</u>
APEX	1,847,961	8/2/1994	Retail department store services (Class 42)
APEX	2,155,905	5/12/1998	Automotive repair and maintenance services (Class 37); retail automobile parts and accessories stores (Class 42)
APEX	2,454,720	5/29/2001	Anti-theft alarms for vehicles, namely programmable anti-theft alarms, horns, trunk releases, flashing parking lights, shock sensors, plug-in connectors and starter disable relays all for vehicles, and all sold together as a unit (Class 12)

APEX ONLINE	2,562,812	4/23/2002	Retail store, mail order purchase and computerized online retail services, featuring, domestics, furniture, bedding, kitchenware, major appliances, small appliances, house wares, bathroom accessories, living room and bedroom accessories, table top accessories, flatware, power equipment, electronics, photography, jewelry, cosmetics, toys, giftware, music and video, gardening, handbags, sporting goods, clocks, luggage, home office, grills, clothing, men's and ladies' accessories, shoes, athletic foot wear, novelties, food and Christmas items (Class 35)
APEX STORES	2,443,933	4/17/2001	Retail store, mail order purchase and computerized online retail services, featuring, domestics, furniture, bedding, kitchenware, major appliances, small appliances, house wares, bathroom accessories, living room and bedroom accessories, table top accessories, flatware, power equipment, electronics, photography, jewelry, cosmetics, toys, giftware, music and video, gardening, handbags, sporting goods, clocks, luggage, home office, grills, clothing, men's and ladies' accessories, shoes, athletic foot wear, novelties, food and Christmas items (Class 35)
APEX MALL	2,657,639	12/10/2002	Shopping mall services and leasing of shopping mall space (Class 36)
APEX COMPANIES	3,557,603	1/6/2009	Shopping Mall services, namely, leasing and management of shopping mall space; real estate management; financial services in the nature of investments and financing in the field of real estate, securities, debt, venture capital and loans (Class 36); Real estate development (Class 37)
APEX ADVANTAGE	2,918,976	1/18/2005	Custom finishing and embellishment of promotional items, namely, embroidery, embossing, engraving

			customized printing, imprinting, screen printing and pad printing with company names, logos, monograms, words and/or pictures for promotional and advertising purposes on the goods of others, namely, sportswear, apparel and other products (Class 40)
APEX COMPANIES	3,244,685	5/22/2007	Custom finishing and embellishment of promotional items, namely, embroidery, embossing, engraving customized printing, imprinting, screen printing and pad printing with company names, logos, monograms, words and/or pictures for promotional and advertising purposes on the goods of others, namely, sportswear, apparel and other products (Class 40)
APEX COMPANIES	3,356,317	12/18/2007	Computer services, namely, creating indexes of information, sites and other resources available on computer networks; computer services, namely, providing search engines for obtaining data on a global computer network (Class 42)
APEX	77/588,785	10/8/2008	Arranging of seminars; Educational demonstrations; Educational services, namely, providing classes, seminars, workshops, training and instruction in the fields of personal and professional topics of interest (Class 41)
APEX UNIVERSITY	77/588,760	10/8/2008	Arranging of seminars; Educational demonstrations; Educational services, namely, providing classes, seminars, workshops, training and instruction in the fields of personal and professional topics of interest (Class 41)
APEX COMPANIES	78/928,022	7/12/2006	Promoting the goods and services of others by placing advertisements and promotional displays in an electronic site accessed through computer networks; providing an on-line advertising guide featuring the goods and services of others; electronic retailing services and ordering services via computer featuring a

			wide variety of merchandise; Retail store and advertising services, featuring a wide variety of merchandise; arranging for others the repair, service and replacement of a wide variety of general merchandise and vehicles; retail automobile parts and accessories stores; retail store services featuring customer pick-up and/or payment of newly purchased or repaired merchandise; pick up and delivery services; business, advertising, marketing and management consulting services (Class 35); automobile repair and maintenance (Class 37)
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4. Registration No. 1,847,961 for the mark APEX, and Registration No. 2,155,905 for the mark APEX have both been renewed pursuant to the applicable provisions of the Lanham Act, and affidavits of incontestability have been filed and acknowledged.

5. Affidavits of continued use have been filed and accepted, and affidavits of incontestability have been filed and acknowledged, in connection with Registration No. 2,562,812 for the mark APEX ONLINE, Registration No. 2,443,933 for the mark APEX STORES, Registration No. 2,657,639 for APEX MALL, and Registration No. 2,454,720 for the mark APEX.

6. Opposer has spent a considerable amount of money, time and energy in connection with the advertising, marketing and promotion of products and services bearing the APEX trademark. As a result, the APEX trademark has become famous, and the public has come to identify the APEX trademark with Opposer and its goods and services.

Applicant and its Marks

7. Upon information and belief, Chemport Incorporation (“Applicant”) is a Korean corporation with a business address at JBCB 15-1 Dongsu-dong, Naju-si, Jeollanam-do, Republic of Korea.

8. Applicant is the record owner of the following U.S. Trademark Application for the mark MEGAPEX & Design:

<u>Application No.</u>	<u>Filing Date</u>	<u>Goods and Services</u>
77/423,772	March 17, 2008	food for babies; pharmaceutical preparations, namely, medicines for sensory organs, medicines for diabetics, metabolic preparations, agent for immunity adjustment; mineral supplements, vitamin supplements, anti-inflammatory agent; pharmaceutical preparations, namely, medicines for circulatory organs, nervines, agents affecting central nervous system; dietary food supplements for medical use; food and dietary supplements for nutritional purpose; food supplement not for medical use mainly comprised of grains; and food supplement not for medical use mainly comprised of edible oils, in International Class 5; edible fats, edible oils, fatty substances for the manufacture of edible foods, human and animal food additives derived from edible fish oils and fats, powdered oil and fat for food, edible fish oils, and energy food not for medical use mainly comprised of fish and shellfish, namely, energy bars, in International Class 29; energy food not for medical use mainly comprised of grains, namely, energy bars; pizzas, baking powder, biscuits, cakes, bread rolls, rice cakes; a cake made from wheat flour, oil, and honey; bars of sweet jellied bean paste; processed grains; and processed wheat, in International Class 30; pet food, beverages for pets, live animals for breeding,

		live fishing bait, foodstuffs for dogs, unprocessed grains, unprocessed edible seeds, agricultural seeds, unprocessed wheat, unprocessed rice, and bird food, in International class 31; and vegetable juices for beverages, extracts of hops for making beer, fruit powders and fruit syrups used in the preparation of soft drinks and sports beverages, orange juice, aerated water, isotonic beverages, tomato juice, drinking water, bottled water, and beer, in International Class 32
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COUNT I: LIKELIHOOD OF CONFUSION

9. Opposer repeats and incorporates herein by reference the averments in the preceding paragraphs.

10. The Chemport Mark is very similar in appearance and commercial impression to the Apex Marks.

11. The goods recited in Application No. 77/423,722 in International Classes 30 and 32 are closely related to those of Opposer, in particular, to Opposer's retail, mail order and online retail services, and the products sold via those services.

12. On information and belief, Opposer is the prior user of the APEX mark. Consequently, Applicant's date of first use for their mark is subsequent to Opposer's actual date of first use of the Apex Marks for the identical or closely related goods and services.

13. In light of the foregoing, the Chemport Mark for the goods recited in the opposed application, in International Classes 30 and 32, is confusingly similar to Opposer's Apex Marks and is likely to cause confusion or mistake, and to deceive the public into believing that Applicant's goods or services originate or are in some manner

sponsored, licensed, associated or otherwise authorized by Apex in violation of
Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d).

COUNT II: DILUTION

14. Opposer repeats and incorporates herein by reference the averments in the preceding paragraphs.

15. Opposer is damaged and will continue to be damaged because Applicant's future use and registration of the Chemport Mark would dilute the distinctive quality of Opposer's Apex Marks.

PRAAYER FOR RELIEF

WHEREFORE, Opposer respectfully requests that this Opposition be sustained and that registration to Applicant for the MEGAPEX & Design trademark in International Class 30 and in International Class 32 be denied.

The filing fee of \$600 for this Notice of Opposition is being submitted electronically with this Notice.

APEX, LLC

June 10, 2009

By: /Gailyc C. Sonia/
Gailyc C. Sonia
Apex, LLC
100 Main Street
Pawtucket, RI 02860
Tel: 401-729-7243
Fax: 401-723.9452
trademarks@theapexcompanies.com

CERTIFICATE OF ELECTRONIC MAILING

I hereby certify that the foregoing Notice of Opposition is being submitted electronically through the Trademark Trial and Appeal Board's ESTTA System on this 10th day of June, 2009.

/Gailyc C. Sonia/
Gailyc C. Sonia

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing NOTICE OF OPPOSITION is being deposited with the U.S. Postal Service with sufficient postage as first class mail this 10th day of June, 2009 in an envelope addressed to Applicant's attorney of record at the following address:

Sangwon S. Kim
LRK Patent Firm , LLC
1952 Gallows Road, Suite 200
Vienna VA 22182

/Gailyc C. Sonia/
Gailyc C. Sonia